

REMARKS

The present Amendment is responsive to the Office Action dated October 16, 2009. A two-month Petition for Extension of Time extending the period of reply from January 16, 2010 up to an including March 16, 2010 is submitted herewith.

Claims 14-16, 19, and 20 were rejected in the Action. Claim 14 is amended, and no claims are added or cancelled herein. Therefore, claims 14-16, 19 and 20 remain pending in the present application. Applicants set forth the following remarks in response to the Action.

In the Action, the Examiner rejected claims 14-16, 19, and 20 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 6,712,819 to Zucherman *et al.* ("Zucherman") in view of U.S. Pat. Pub. No. 2004/059343 to Shearer *et al.* ("Shearer") and PCT Application No. WO 02/071986 to Grunberg *et al.* ("Grunberg"). The Examiner asserted that Grunberg shows in Fig. 4c a tool for delivering an implant to the spine that has a retractable rod with a pin at the distal end thereof that is perpendicular to the shaft of the tool. Further, the Examiner asserted that Grunberg also illustrates in Fig. 8 the engagement of such a pin in a recess of a baseplate. The Examiner asserted that it would have been obvious to one of ordinary skill in the art to modify the pin of the tool of Zucherman as modified with Shearer (teaching a spring located internal the shaft of the apparatus) by placing the pin in a perpendicular orientation or bent downward such that it matches or engages the hole or recess of a baseplate for spinal surgery as taught by Grunberg.

Applicants respectfully assert that independent claim 14 is unobvious over Zucherman in view of Shearer and Grunberg. While holding pin 157 of Zucherman may extend and retract somewhat from the shaft of the apparatus along a longitudinal axis thereof, the distal end of the holding pin is co-axial with the longitudinal axis of the apparatus. Thus, in contrast to

the claimed invention, the distal end of holding pin 157 of the apparatus of Zucherman is not bent downwardly.

The downwardly bent distal end of the holding pin of the claimed apparatus is configured to engage an engagement hole of the claimed orthopedic device. Upon the downwardly bent distal end of the holding pin of the claimed apparatus engaging an engagement hole of the claimed orthopedic device, the orthopedic device may be brought in contact with the confronting surface of the shaft distal end of the apparatus to hold the orthopedic device such that the apparatus may manipulate the orthopedic device.

While there are pins that extend in a perpendicular fashion from the shaft of the apparatus in Zucherman (for instance, pins 160), these pins are integral with distal end portion 147 of the apparatus and are not extendible and retractable as claimed. Further, the portion of the apparatus as shown in Fig. 8 of Grunberg that the Examiner refers to as engaging the recess of the baseplate is not extendible and retractable along a longitudinal axis. The engagement of these pins in a recess of a baseplate occurs as the apparatus moves from a collapsed to an expand position. Therefore, neither Zucherman nor Grunberg teaches that "the distal end of the holding pin is prevented from being entirely retracted within the shaft under the bias of the spring as the distal end of the holding pin abuts the confronting surface of the distal end of the shaft". Further, Shearer does not cure this deficiency. Thus, a *prima facie* case of obviousness cannot be made using the cited references. In light of the foregoing, Applicants respectfully assert that independent claim 14 is unobvious over the cited references and is condition for allowance. Claims 15, 16, 19, and 20 are also in condition for allowance, *inter alia*, their dependence from an allowable base claim. As it is believed that all of the

rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: March 16, 2010

Respectfully submitted,
Electronic signature: /William
A. Di Bianca/
William A. Di Bianca
Registration No.: 58,653
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
600 South Avenue West
Westfield, New Jersey 07090
(908) 654-5000
Attorney for Applicants

U38111_LDOC